

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL J. CAUSER and U.S. POSTAL SERVICE,
POST OFFICE, Bradford, PA

*Docket No. 99-1243; Submitted on the Record;
Issued August 15, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish a causal relationship between his back problems and factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on February 8, 1999.

On June 5, 1997 appellant, then a 47-year-old postal clerk, filed a notice of occupational disease (Form CA-2) alleging that on May 30, 1997 he first realized that his degenerative discs and spurs in his spine, which were first diagnosed on November 30, 1986, were due to his employment duties.¹

In support of his claim, appellant submitted various medical opinion evidence from 1986 to 1995 indicating treatment for back pain including records from Bradford Regional Medical Center and a June 25, 1993 report by Dr. Dilbagh Singh, an attending Board-certified internist. The reports noted a history of back problems beginning in 1986 including a cervical spinal fusion. Dr. Singh in his report diagnosed low backache, cervical fusion and groin pain. Dr. Singh also opined that appellant's work "exacerbates his back condition and limits his activities several times a year." Appellant also submitted duty status reports (Form CA-17) dated June 5, 13 and 20, 1997 reports by Dr. Anita J. Herbert, an attending Board-certified internist. On these forms, Dr. Herbert diagnosed recurrent lumbar strain and noted restrictions on standing, bending/stooping, twisting and pushing/pulling with no reaching.

By letter dated July 10, 1997, the Office informed appellant that the evidence of record was insufficient to establish his claim and advised him as to the type of evidence required to support his claim.

¹ Appellant had previously filed an occupational disease claim on November 17, 1992 alleging that his degenerative spinal disease and arthritis were due to his employment which was denied by the Office on July 30, 1993. This claim had been assigned claim number A03-181997.

By decision dated August 25, 1997, the Office found the evidence insufficient to establish a causal relationship between his disability and factors of his employment, and thus denied his claim. In the attached memorandum, the Office noted that appellant had failed to submit any current medical opinion evidence containing a rationalized opinion linking appellant's disability to factors of his employment. The Office indicated that appellant had been advised of the deficiency in his claim and had not responded.

By letter dated August 27, 1997, appellant requested written review of the record.

By decision dated March 20, 1998, the hearing representative affirmed the denial of benefits on the basis that appellant had failed to establish a causal relationship between his back condition and factors of his employment.

On January 21, 1999 appellant requested reconsideration and submitted a factual statement, a June 25, 1993 report from Dr. Singh, medical records from Bradford Regional Medical Center for July and August 1994, reports dated June 5, 13 and 20, 1997 from Dr. Herbert, a December 16, 1998 note on work restrictions by Dr. Marc A. Flitter, a Board-certified neurologist, and office notes dated May 5 and July 8, 1998 from Dr. David H. Johe, an attending physician specializing in orthopedic surgery and emergency medicine.

Dr. Herbert, in a June 5, 1997 report, diagnosed "Probably low back strain or arthritis flare up," noted work restrictions of very light duty and referred him to see Dr. Johe. In a June 13, 1997 report, Dr. Herbert diagnosed "Acute flare up of osteoarthritis or recurrent lumbar strain." The physician also noted that appellant's pain pattern remained the same. Dr. Herbert in her June 20, 1997 report diagnosed "flare up of arthritis and/or back pain" and recommended that appellant continue with his work restrictions including no heavy lifting or pushing or pulling.

In a note dated December 16, 1998, Dr. Flitter released appellant to return to work on January 4, 1999 with restrictions including no heavy lifting, no pulling or pushing and no twisting or bending.

In his office notes, Dr. Johe noted that appellant had another problem with his back and that appellant believes his back problems are work related. Dr. Johe noted appellant's back and shoulder complaints. In the July 8, 1997 office note, the physician noted that x-ray interpretations taken on December 28, 1994 and June 13, 1997 revealed some osteoarthritis.

On February 8, 1999 the Office denied appellant's request for merit review on the basis that the evidence he submitted was irrelevant and cumulative.

The Board finds that appellant has failed to establish a causal relationship between his back problems and factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the

² 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act, that an injury was sustained in the performance of the duty alleged and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in a the performance of duty in an occupational disease claim, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is alleged; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the appellant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the appellant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the appellant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁷

In the present case, there is insufficient rationalized medical opinion evidence to support the fact that appellant suffered an injury or disability causally related to any factors of his federal employment. None of the reports submitted by Dr. Herbert or Dr. Singh have provided a reasoned medical opinion, supported by objective finding as to the medical connection between appellant’s diagnosed condition lumbar strain and factors of his federal employment. For example, they did not describe appellant’s specific work duties in any detail or provide medical reasoning explaining how or why appellant’s employment duties caused or aggravated a specific medical condition.⁸ Without any explanation or rationale for the conclusion reached, such

³ *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ The Office’s regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. § 10.5(a)(15), (16).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Ern Reynolds*, 45 ECAB 690 (1994).

⁷ *Kathy Marshall*, 45 ECAB 827, 832 (1994).

⁸ *Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

reports are insufficient to establish causal relationship.⁹ The reports of Dr. Herbert and Dr. Singh failed to provide a comprehensive and rationale medical opinion explaining the causal relationship between appellant's diagnosed condition of lumbar strain and any workplace factor. Therefore, they are of no probative value and insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The Board also finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on February 8, 1999.

Under section 8128(a) of the Act,¹¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹² which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by OWCP; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the OWCP.”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹³

In support of his request for reconsideration dated February 9, 1999, appellant submitted a factual statement, a June 25, 1993 report from Dr. Singh, medical records from Bradford Regional Medical Center for July and August 1994, reports dated June 5, 13 and 20, 1997 from Dr. Herbert, a December 16, 1998 note on work restrictions by Dr. Flitter, a Board-certified neurologist, and office notes dated May 5 and July 8, 1998 from Dr. David H. Johe, an attending

⁹ *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

¹⁰ *Victor J. Woodhams*, *supra* note 5.

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.606(b) (1999).

¹³ 20 C.F.R. § 10.608(b).

physician specializing in orthopedic surgery and emergency medicine. The Office properly refused to reopen appellant's claim for a merit review as the reports from Dr. Singh and the Bradford medical record were previously submitted and considered by the Office in its prior decision and therefore are repetitious. Both Dr. Flitter's December 16, 1998 report and Dr. Herbert's June 5, 1997 report note physical restrictions, but are devoid of any opinion as to the cause of appellant's work injury. Similarly, Dr. Johe noted appellant's back and shoulder problems and that appellant believed these problems were work related. Dr. Johe provided no independent opinion as to whether appellant's disability was work related or how his disability was causally related to appellant's employment duties. These reports are therefore not probative of the issue at hand, whether appellant's disability is causally related to his employment. Furthermore, none of the medical reports contain an accurate medical or factual history. Thus, these reports are not rationalized and therefore are of limited probative value.¹⁴ Consequently, as the evidence submitted by appellant with his reconsideration request fails to address the central issue in this case, *i.e.*, whether appellant's back problems were causally related to his employment duties, the evidence submitted is insufficient to warrant reopening the record.

The decisions of the Office of Workers' Compensation Programs dated February 8, 1999 and March 20, 1998 are affirmed.

Dated, Washington, D.C.
August 15, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹⁴ *James A. Wyrick*, 31 ECAB 1805 (1980).